

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DOUGLAS HANDSHOE

v.

CIVIL ACTION NO. 1:15cv382-HSO-JCG

VAUGHN PERRET, et al.

ASHOKA'S MOTION TO DISMISS

Defendant Ashoka (“Ashoka”) incorrectly named in the Second Amended Complaint as “The Ashoka Foundation,” respectfully requests that the Court dismiss the Second Amended Complaint filed by Plaintiff Douglas Handshoe pursuant to Federal Rule of Civil Procedure 12(b)(6).

As explained in the accompanying memorandum, which is incorporated herein by reference, the Second Amended Complaint should be dismissed as to Ashoka because it contains no allegations of any acts or omissions by Ashoka that could support any of Plaintiff’s alleged causes of action. As such, the Second Amended Complaint fails to state a claim against Ashoka under any alleged cause of action.

Specifically, the Second Amended Complaint fails to state a claim under 17 U.S.C. § 512(f) as to Ashoka because Plaintiff fails to allege that Ashoka made any misrepresentation whatsoever. The Second Amended Complaint contains no allegation that Ashoka submitted a takedown notice under the Digital Millennium Copyright Act (“DMCA”) with respect to Plaintiff’s infringement on Ashoka’s copyright. A misrepresentation in a DMCA takedown notice is not only a necessary element of a claim under 17 U.S.C. § 512(f)—it is the crux of such a claim. Because Plaintiff fails to allege that Ashoka made any misrepresentation at all with respect to Plaintiff’s infringement on Ashoka’s copyright, the Second Amended Complaint fails

to state a claim under § 512(f) as to Ashoka. As a result, the Second Amended Complaint should be dismissed with prejudice as to Ashoka.

In addition, Ashoka joins in, adopts, and incorporates by reference, the Motion to Dismiss filed herein by National Geographic Society, Inc. (Document #47), the accompanying Memorandum (Document #48), and the Reply (Document # 54).

/s/ Douglas J. Gunn

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Attorney for Ashoka (incorrectly named
herein as “The Ashoka Foundation”

DATED: August 4, 2016

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record who have registered with the ECF system.

This is the 4th day of August, 2016.

/s/ Douglas J. Gunn